

**STATE OF NEW YORK
SUPREME COURT, APPELLATE DIVISION
THIRD JUDICIAL DEPARTMENT
P.O. BOX 7288, CAPITOL STATION
ALBANY, NY 12224**

**INSTRUCTIONS FOR APPELLANT MOVING TO WAIVE COSTS, FEES
AND EXPENSES AND FOR ASSIGNMENT OF COUNSEL ON A FAMILY
COURT APPEAL**

- 1) At the top of the attached form is a Notice of Motion. The title of the case should be placed on the left hand side of the form and it should be written as the title appeared on the order or judgment appealed from. This is the caption. Below the caption is a sentence which begins "Please take notice...". The first date to be filled in is the date the attached affirmation in support of the motion was dated. The second date to be filled in is the return date of the motion, which should be a Monday after service of the motion papers upon all parties as described in paragraph 2 below.
- 2) The motion papers should be served on all parties (if a party is represented by an attorney, service of a copy should be made upon the attorney) on the County Attorney of the County in which the papers from the lower court were filed, and any Attorney for the Child. If service of the motion papers is done by personal delivery, the motion should be made returnable on a Monday at least eight (8) days after the motion papers are delivered. If service of the motion papers is done by mail, the motion should be made returnable on a Monday at least thirteen (13) days after the motion papers are mailed.
- 3) As soon as possible after service of copies of the motion papers, the original motion papers, as well as proof that you have served the motion papers on the other parties, the County Attorney and the Attorney for the Child, should be forwarded to this office. If the motion is being made in connection with an appeal to this Court, you should also attach to the motion papers a copy of the order or judgment being appealed from, the decision, if any, upon which the order or judgment was based, and a copy of the notice of appeal.
- 4) **THERE WILL NOT BE ORAL ARGUMENT ON THE RETURN DATE OF THE MOTION.**

Please fill in the underlined spaces in the following form. Return the original to this Court, forward one copy to each of the other parties, forward one copy to the County Attorney, one copy to any Attorney for the Child and keep one copy for your records.

STATE OF NEW YORK SUPREME COURT
APPELLATE DIVISION THIRD DEPARTMENT

IN THE MATTER OF

**NOTICE OF MOTION
BY APPELLANT TO WAIVE
COSTS, FEES AND EXPENSES/
ASSIGNMENT OF COUNSEL ON
APPEAL OF AN ORDER OF
FAMILY COURT**

Petitioner(s) ,

v

Family Court
Docket No./ Index No.:

Appellate Division Case No.:

Respondent(s) .

PLEASE TAKE NOTICE that, upon the annexed affirmation dated on the _____ day of _____, 20____, a motion will be made to this Court, on the _____ day of _____, 20____, in the City of Albany, New York for an order granting the appellant a waiver of costs, fees and expenses.

Dated: _____

(Signature) _____

(Print Name) _____

(Address) _____

(Your name, address and telephone number)

DIN (if applicable) _____

(Telephone) _____

PLEASE TAKE NOTICE that, pursuant to 22 NYCRR 1250.4 (a) (7) and (8) of the Practice Rules of the Appellate Division, this motion will be submitted on the papers, and the personal appearance of counsel or the parties is neither required nor permitted.

AFFIRMATION IN SUPPORT OF MOTION

1. My full name and date of birth is: _____

2. What is the nature of the above entitled proceeding?

3. I am appealing from a judgment/order of the _____ County,
_____ Court, which provides as follows:

(Please attach hereto a copy of the order or judgment appealed from, and the decision, if any, upon which the order or judgment is based and a copy of your notice of appeal.)

4. a. An order or judgment has been entered in the _____ Court Clerk's Office on _____, 20 _____.

b. A copy of that order of judgement was served to me on, _____, 20 _____.

5. a. Have you filed an original and two copies of any notice of appeal with the Clerk of the appropriate court? Yes No

b. If yes, have you served a copy of notice of appeal on your adversaries and the Attorney for the Child? Yes No

6. a. Were you represented by counsel? Yes No

If yes, give counsel's name and address:

b. Was counsel assigned or retained? Assigned Retained

c. If you were represented by retained counsel in the court below, state the name and address of the person who paid his/her fee and the amount.

7. What relief are you seeking by this motion?

8. What facts are present to support your contention that there is merit to your appeal?
(attach additional documentation if necessary)

9. Are you able to pay the costs, fees and expenses necessary to maintain the appeal?

Yes No

10. What is your occupation? If you are a student, indicate the school which you attend and the name and address of the person who is paying your tuition, room and/or board.

11. Are you employed? Yes No

If yes, state your weekly salary and provide the name and address of your employer.

Please provide a copy of your most recent pay stub.

12. If married and your spouse is employed, what is his/her weekly gross salary and the name and address of his/her employer?

13. Do you receive financial support from anyone? Yes No

If yes, please provide the name, relationship and address of this person or persons and the amount of support provided to you.

14. Do you provide financial support to anyone? Yes No

If yes, please provide the name, relationship and address of the person or persons and the amount of support you provide.

15. Do you own real estate either by yourself or with someone else? Yes No

If yes, please provide the following information:

a. Other owner(s) (if any):

b. Location (street address, mailing address; Town, County, State):

c. Current value, including improvements:

d. Existing mortgages and/or liens (attach additional sheet, if necessary):

1. Name of bank, mortgagee or lien holder:

2. Balance due:

16. List the location and amount of any savings or checking accounts held in your name or jointly with others (attach additional sheet, if necessary):

<u>Location (Bank)</u>	<u>Type</u>	<u>Owner(s)</u>	<u>Balance</u>
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

17. List any stocks, bonds, trusts or cash on hand owned by you in which you have any benefit and give the type, location and value of each (attach additional sheet, if necessary):

18. Please state the year, make, model and value of any motor vehicle(s) owned by you and the amount of any existing loan(s):

19. Do you own any other assets not listed above? Yes No

If yes, please describe the asset(s) and state the value (attach additional sheet, if necessary):

20. My monthly income and expenses are as follows:

INCOME:

My salary _____

My spouse's salary (if applicable) _____

Other income _____

T TAL _____

EXPENSES:

Rent or mortgage payment _____

Food _____

Utilities (heat, telephone, water, electric, cable) _____

Automobile expenses _____

Premiums on life or medical insurance policies _____

Repayment of loans _____

Name of creditor and amount _____

Other obligations, including maintenance and / or support _____

TOTAL _____

21. Is any other person beneficially interested in any recovery sought herein? Yes No

If so, is such person able to pay the costs, fees and expenses for appealing Yes No

22. Do you authorize the Court to make any inquiries or investigation concerning the answers given by you in this affirmation? Yes No

23. Did someone else complete this form on your behalf? Yes No

If yes, were the questions and answers read to you and are your answers true? Yes No

I affirm this _____ day of _____, _____, under the penalties of perjury under the laws of New York, which may include a fine or imprisonment, that the foregoing is true, and I understand that this document may be filed in an action or proceeding in a court of law.

(Signature) _____
 (Print Name) _____

AFFIRMATION OF SERVICE OF MAILING

On the _____ day of _____, 20____, I served a true copy of the annexed notice of motion and supporting affirmation by mailing the same in a sealed envelope, with postage prepaid thereon, in a post office or official depository of the U.S. Postal Service within the State of New York, addressed to the last known address(es) as indicated below:

(Insert below the name[s] and address[es] of the person[s] to whom you are mailing the papers being filed with this Court. If necessary, attach extra pages for additional names and addresses.)

Name & Address	Name & Address

I affirm this _____ day of _____, _____, under the penalties of perjury under the laws of New York, which may include a fine or imprisonment, that the foregoing is true, and I understand that this document may be filed in an action or proceeding in a court of law.

(Signature) _____
(Print Name) _____